

We find the draft bill set forth in the Committee Print of May 26, 1971 a well drafted piece of legislation which does meet the substantive objections of other previous bills.

Unfortunately one of the most serious problems for the Agency and the intelligence community relates to the crossing of command lines and the establishment of outside review authority by the Board of Employee Rights plus the de novo jurisdiction in the courts. In effect, such procedural authority would result in loss by default of most cases that could be brought under such a bill. The Agency would not be able to reveal sources, methods and procedures in its own defense or in defense of an employee supervisor charged with an infraction under this legislation.

We request full exemption from the bill.

Principal differences between Committee Print and Ervin bill on invasion of privacy of Federal employees (H.R. 7199 by Mr. Wilson, with some variations, and H.R. 7969 by Mr. Galifianakis)

1. Technical aspects: The Committee Print is far superior in terms of drafting. It addresses itself directly to the language and sections of Title 5, as the Ervin bill does not. Its definitions are tighter and language clearer. If the subcommittee decides to move with an invasion of privacy bill, it will have to be redrafted along the lines of the Committee Print.
2. Prohibitions: Both contain essentially the same prohibitions, though as noted above the Committee Print language is different. Both prohibit--
 - inquiry as to race, religion, national origin, or attendance at meetings not related to official duties;
 - requiring participation in outside activities unless related to official duties, or reports on such outside activities;
 - requiring polygraph or psychological tests as to personal relationships with relatives, religious beliefs, or sexual conduct. (The Ervin bill is somewhat broader in that it refers to any examination.)
 - requiring participation in political campaigns. (The Ervin bill specifies contributions and meetings--the Committee Print language is broader), bond or charitable drives, and disclosure of personal financial data.

The Committee Print does not specifically grant right of counsel in the interrogation process as does the Ervin bill. However, this is a relatively minor omission since employees now have the right to counsel in proceedings against them. The Ervin bill could be interpreted as expanding this right to almost any meeting between employer and employee.

3. Exclusions: Both bills contain several similar exclusions to the above provisions in cases of bona fide medical examinations, conflict of interests, activities related to official duties, and national security. The Committee Print is more inclusive in its exclusions with one exception noted below. The Ervin bill excludes CIA and NSA from the polygraph section. The Committee Print excludes all agencies dealing with the national security from the sections concerning inquiry as to race, religion or national origin; reports on outside activities; psychological or polygraph tests; and disclosure of financial data.

On the other hand, the Ervin bill excludes the FBI from the whole bill (Cong. Wilson's bill, H.R. 7199, is similar to Ervin's bill except that it does not exclude the FBI).

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4. Appeals: The Ervin bill establishes a part-time Board of Employee Rights. An aggrieved employee may take any or all (simultaneously) of the following actions:

- a. Going through normal grievance channels;
- b. Appealing directly to the Board;
- c. Going directly to court.

Thus an employee may go outside an agency before exhausting administrative remedies.

The Committee Print establishes a full-time Board, but regularizes the appeals procedure. An employee must first institute a regular grievance appeal. If an agency does not act within 60 days, the employee may then go to the Board. He may also go to the Board within 15 days after an adverse decision.

When an employee's case goes to the Board, a hearing must be conducted within 30 days and final decision must be rendered within 30 days after close of hearings. An aggrieved employee may then appeal to the courts within 30 days after the final decision.

The Committee Print also calls for an agency to pay attorney's fees for employees whose grievances are upheld. The Ervin bill does not.

5. Penalties: The Ervin bill allows the Board to issue a reprimand against an official, or order a 15-day suspension on the first offense; and suspension for 30 days or removal for the second offense. Military officers would be subject to court martial.

The Committee Print has the same provision for the first offense. For the second and subsequent offenses, it authorizes suspension for from 15 to 60 days or removal. Military officers would be subject to court martial.

September 9, 1971

STAT

Mr. Warner - [redacted] brought attached up at 12:25 p. m. They had just received. It is an Ervin-type bill and will be marked up tomorrow. Maury is due to see Henderson 3 p. m. today.

STAT

[redacted] said first review is that it relieves us from most of the troublesome substantive provisions. However, the mere fact that we are subject to some of the other provisions which do not cause us any trouble, technically makes us subject to the Board of Appeals, etc.

STAT

[redacted] would like your comments. J. 9/13

Sectional Analysis of Committee Print
on invasion of privacy

Section 1 (a) Adds the following subchapter III to chapter 71, 5 USC:

"Sect. 7171 - Statement of Policy

"Sect. 7172 - Definition of "official"

"Sect. 7173 - Employee Rights

"(a) No official may:

CIA,
NSA,
FBI and
agencies
involved in
national
security
exempted by
subsect. (b)

- "(1) Require or request an employee or applicant to disclose race, religion, or national origin of himself or his family.
- "(A) Allows inquiry concerning citizenship.
 - "(B) Allows inquiry as to national origin if national security, law enforcement, or work outside U.S. is involved.
 - "(C) Allows inquiry as to race, religion, or national origin if a discrimination complaint is involved.

"(2) Prohibits requiring attendance at any meeting unless:

- "(A) It is in connection with official duties.
- "(B) It is in connection with training for official duties.

"(3) Prohibits requiring:

CIA,
NSA,
FBI and
other agencies
dealing with
national secu-
rity exempted
by subsec. (b)

- "(A) Participation in any activity unless relating to official duties or training.
- "(B) Reports on any outside activities unless:
 - "(i) there is reason to believe that the activity adversely affects performance of official duties.
 - "(ii) it is in connection with tax investigations, financial conflict of interests, or expenditure of government funds.

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"(9) Prohibits adverse actions against employees because of:

"(A) Refusal to violate the Title;

"(B) Exercising rights of judicial review under Sect. 7175.

"(b) Exempts CIA, NSA, FBI and any other agency or part of an agency designated by the President because of national security from paragraphs "(1), (3B), (4), and (7) of subsection (a) of Sect. 7173.

"(c) (1) Provides that a formal grievance concerning violation of "(a)" may be filed within 15 days after violation.

"(2) Provides that an individual may file a complaint with Board on Employee Rights if the agency decision is adverse or if more than 60 days have elapsed without decision since filing the agency appeal. The complaint must be filed within 15 days after the adverse decision or after the expiration of the 60-day period.

"Sect. 7174 Board on Employee Rights

"(a) Establishes a three-man board appointed by the President with advice and consent of the Senate. Only two may be of one political party and none may be Government employees. The President will designate the Chairman.

"(b) Establishes 6-year terms.

"(c) Quorum provisions.

"(d) Authority to appoint employees and make expenditures.

"(e) Gives power to establish rules and regulations, solicit depositions, determine nature and extent of necessary evidence, pay attorneys, pursuant to Section 7176 (a) of this Title, and issue subpoenas.

"(f) (1) Provision for receipt of complaints.

"(2) Allows dismissal of complaint within 10 days if Board determines it is unjustified.

"(3) If complaint is not dismissed, requires Board to:

"(A) Conduct a hearing within 30 days of receipt of complaint, and

"(B) furnish sufficient notice of the hearing.

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If a hearing is conducted --

- (i) The agency must reply and participate;
- (ii) The official against whom a complaint is filed may file an individual answer and participate in the hearing.

"(4) Final decision must be rendered within 30 days after the conclusion of the hearing.

"(g) Gives employee organizations the right to participate in hearings with the consent of the aggrieved person.

"(h) Makes Board subject to the administrative procedures provisions of Title 5.

"(i) Determination of the Board constitutes a final decision for the purposes of judicial review.

"(j) If the Board determines that a civilian official not appointed by the President and confirmed by the Senate, has violated this Title, it --

 "(1) shall order cessation of the unlawful act;

 "(2) shall first attempt to eliminate the act through informed means;

 "(3) may

 "(A) (i) issue an official reprimand or suspend the official, upon first offense, for 15 days.

 (ii) for subsequent offenses, suspend an official for 15 to 60 days or order his dismissal.

 "(B) In the case of a Presidential appointee confirmed by the Senate, transmit a report to the President and Congress.

Action under 3(A) may not become effective until final court disposition of an appeal, if any.

"(k) In the case of violations by military officer the Board shall:

 "(1) Submit a report to the appropriate Secretary;

 "(2) Attempt to informally eliminate the unlawful act;

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- "(3) Refer its final determination to the appropriate Secretary who shall institute proceedings against the officer.

Except that no steps will be taken by the Secretary until final disposition of a court appeal, if any.

- "(1) (1) Provisions for an annual report to Congress by the Board.
"(2) Provisions for an annual report to Congress of actions by the Secretary of each military department pursuant to the Title.

"Sect. 7175 Judicial Review

- "(a) Within 30 days after the determination or order of the Board, an aggrieved employee may, in an appropriate district court,
 "(1) Petition for a review of the determination or order or
 "(2) file for a trial de novo on the complaint.

The concerned executive agency and the Board shall be defendants. An accused official, or an official aggrieved by the Board's action may participate as an individual.

- "(b) If no complaint against the Board's action has been filed within the thirty-day period above, an aggrieved official has an additional 30 days to file a petition in the appropriate District court to review the Board's action.
"(c) A petition filed under (a) or (b) will name both the appropriate Executive agency and the Board as defendants and both shall file an answer.
"(d) When a petition is served, the Board shall provide the court with pertinent information. The rest of the section outlines the jurisdiction of the court when a petition is filed.
"(e) and (f) Outline the procedures and jurisdiction for trial de novo.

"Sect. 7176

- "(a) Protects individuals participating in any proceedings under the subchapter from intimidation, etc.
"(b) Any employee or official called on to participate in any proceedings will do so without losing any benefits, etc. Time spent during regularly scheduled tours of duty will be considered official business. Travel incurred will be considered travel on official business.

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"(c) An attorney for a party of which the Board or court has ruled in favor may receive remuneration for his services. The Board may determine the remuneration, and the appropriate Executive agency shall pay the amount in accordance with the provisions included in paragraphs (1) - (3)."

(b) Conforming amendment.

(c) Places Board members in Executive Level V.

Section 2 Effective date will be within 180 days after date of enactment as the Board shall prescribe.

September 9, 1971

[COMMITTEE PRINT]

MAY 26, 1971

92D CONGRESS
1ST SESSION

H. R.

IN THE HOUSE OF REPRESENTATIVES

JUNE , 1971

Mr. ----- introduced the following bill; which was referred to the Committee on -----

A BILL

To amend title 5, United States Code, to protect civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights, to prevent unwarranted governmental invasions of their privacy, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*
2 That (a) chapter 71 of title 5, United States Code, is
3 amended by adding at the end thereof the following new
4 subchapter III:

6 **“Subchapter III—Employee Rights**

7 **“§ 7171. Policy**

8 “It is the policy of the United States, as an employer,

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1 to assure that those officials of executive agencies charged
2 with administrative or supervisory responsibility recognize
3 and protect the personal and individual rights, entitlements,
4 and benefits of employees of, and applicants for employment
5 in, executive agencies.

6 **“§ 7172. Definition**

7 “For the purpose of this subchapter, ‘official of an
8 executive agency’ means—

9 “(1) an officer of an executive agency;

10 “(2) an officer of any of the uniformed services;

11 and

12 “(3) an individual acting or purporting to act
13 under the authority of an officer referred to in para-
14 graph (1) or (2) of this section.

15 **“§ 7173. Employee rights**

16 “(a) An official of an executive agency may not—

17 “(1) require or request, or attempt to require
18 or request, an employee of an executive agency or an
19 applicant for employment in an executive agency to
20 disclose his race, religion, or national origin, or the race,
21 religion, or national origin of any of his forebears. This
22 paragraph does not prohibit inquiry concerning—

23 “(A) the citizenship of an employee or appli-
24 eant;

25 “(B) the national origin of an employee or

1 applicant when that inquiry is considered necessary
2 or advisable to determine suitability for assign-
3 ment to activities or undertakings related to the
4 national security of the United States or to law
5 enforcement or to activities or undertakings of any
6 nature outside the United States; or

7 “(C) the race, religion, or national origin of
8 an employee or applicant when that matter is in
9 issue in an allegation or complaint of discrimination;

10 “(2) coerce, require, or request, or attempt to
11 coerce, require, or request, an employee of an Executive
12 agency to attend or participate in a formal or informal
13 meeting, assemblage, or other group activity held to
14 present, advocate, develop, explain, or otherwise cover
15 in any way, by lecture, discussion, discourse, instruction,
16 visual presentation, or otherwise, any matter or subject
17 other than—

18 “(A) the performance of official duties to
19 which that employee is or may be assigned in the
20 Executive agency; or

21 “(B) the development of skills, knowledge, or
22 abilities that qualify him for the performance of
23 those official duties;

24 “(3) coerce, require, or request, or attempt to

1 coerce, require, or request, an employee of an Executive
2 agency to—

3 “(A) participate in any way in an activity or
4 undertaking unless it is related to the performance
5 of official duties to which the employee is or may
6 be assigned in the Executive agency or related to
7 the development of skills, knowledge, or abilities
8 that qualify him for the performance of those official
9 duties; or

10 “(B) make any report concerning any activity
11 or undertaking of the employee not involving his
12 official duties, except—

13 “(i) when there is reason to believe that
14 the activity or undertaking conflicts with, or
15 adversely affects the performance of, his official
16 duties; or

17 “(ii) as authorized to the contrary under
18 paragraph (7) of this subsection.

19 This paragraph does not prohibit the use of appropriate
20 publicity to inform employees of requests for assistance
21 from public service programs or organizations;

22 “(4) require or request, or attempt to require or
23 request, an employee of an Executive agency or an ap-
24 plicant for employment in an Executive agency to submit
25 to an interrogation or examination or to take a polygraph

1 or psychological test designed to elicit from the employee
2 or applicant information concerning his personal relation-
3 ship with any individual related to him by blood or mar-
4 riage, his religious beliefs or practices, or his attitude or
5 conduct with respect to sexual matters. This paragraph
6 does not prohibit—

7 “(A) a physician from eliciting this informa-
8 tion or authorizing these tests in the diagnosis or
9 treatment of an employee or applicant in individual
10 cases and not pursuant to general practice or regu-
11 lation governing the examination of employees or
12 applicants, when the physician considers the infor-
13 mation necessary to enable him to determine
14 whether or not the employee or applicant is suffer-
15 ing from mental illness;

16 “(B) an official of an Executive agency from
17 advising an employee or applicant of a specific
18 charge of sexual misconduct made against the em-
19 ployee or applicant and giving him a full oppor-
20 tunity to refute the charge; or

21 “(C) an official of an Executive agency from
22 eliciting, from an employee or applicant, in individ-
23 ual cases and not pursuant to general practice or
24 regulation, information concerning the personal re-
25 lationship of the employee or applicant with any

1 individual related to him by blood or marriage, when
2 that official considers the information necessary in
3 the interest of national security;

4 “(5) coerce, require, or request, or attempt to
5 coerce, require, or request an employee of an Executive
6 agency to—

7 “(A) support, by personal endeavor or contribu-
8 tion of money or any other thing of value, the
9 candidacy or candidacies for nomination or election
10 of an individual or group of individuals to public
11 office in the Government of the United States or of
12 a State, district, Commonwealth, territory, or pos-
13 session of the United States; or

14 “(B) attend a meeting held to promote or sup-
15 port the activities, undertakings, programs, or plat-
16 forms of a political party of the United States or of
17 a State, district, Commonwealth, territory, or pos-
18 session of the United States;

19 “(6) coerce, require, or request, or attempt to
20 coerce, require, or request, an employee of an Execu-
21 tive agency to invest his earnings in bonds or other obli-
22 gations or securities issued by the United States or by
23 an Executive agency, or to make donations to any insti-
24 tution or cause of any kind. This paragraph does not
25 prohibit an official of an Executive agency from calling

1 meetings and taking any action appropriate to inform
2 an employee of the opportunity—

3 “(A) voluntarily to invest his earnings in
4 bonds or other obligations or securities issued by
5 the United States or by an Executive agency; or

6 “(B) voluntarily to make donations to any in-
7 stitution or cause;

8 “(7) require or request, or attempt to require or
9 request, an employee of an Executive agency (other
10 than a Presidential appointee) to disclose his property or
11 the property of any member of his family or household.

12 This paragraph does not prohibit—

13 “(A) the Department of the Treasury or any
14 other Executive agency from requiring an employee
15 to make such reports as may be necessary or appro-
16 priate for the determination of his liability for taxes,
17 tariffs, customs duties, or other similar obligations to
18 the United States; or

19 “(B) an official of an Executive agency from
20 requiring an employee who participates (other than
21 in a clerical capacity) in any determination with re-
22 spect to—

23 “(i) a Government contract or grant;

24 “(ii) the regulation of non-Federal enter-
25 prise;

1 “(iii) the tax or other liability of any per-
2 son to the United States; or
3 “(iv) a claim that requires expenditure of
4 money of the United States;
5 from disclosing specific items of the property of
6 that employee, or specific items of the property of
7 any member of his family or household, which
8 may tend to indicate a conflict of interest with re-
9 spect to the performance of any of the official duties
10 to which the employee is or may be assigned.

11 As used in this paragraph, ‘property’ includes items
12 of property, income, and other assets, and the source
13 thereof, liabilities, and personal and domestic expendi-
14 tures;

15 “(8) prohibit or restrict, or attempt to prohibit
16 or restrict, the exercise by an employee of an Executive
17 agency of the right of reasonable communication with
18 any official of his agency; or

19 “(9) remove, suspend or furlough from duty with-
20 out pay, demote, reduce in rank, seniority, status, pay,
21 or performance or efficiency rating, deny promotion to,
22 relocate, reassign, discipline, or discriminate in regard
23 to any employment right, entitlement, or benefit or any
24 term or condition of employment of, an employee of an

1 Executive agency, or threaten to commit any of those
2 acts, by reason of—

3 “(A) the refusal or failure of the employee
4 to submit to or comply with any requirement, re-
5 quest, or action prohibited by this subsection; or

6 “(B) the exercise by the employee of any
7 right, entitlement, benefit, or other protection
8 granted or secured by this section and section 7175
9 of this title.

10 “(b) Paragraphs (1), (3) (B), (4), and (7) of
11 subsection (a) of this section do not apply to—

12 “(1) the Central Intelligence Agency;

13 “(2) the National Security Agency;

14 “(3) the Federal Bureau of Investigation; or

15 “(4) any other Executive agency, or part thereof,
16 as the President may designate in the interest of national
17 security.

18 “(c) (1) An employee of, or an applicant for employ-
19 ment in, an Executive agency who claims to be aggrieved by
20 a violation or threatened violation of subsection (a) of this
21 section is entitled to file a grievance with the agency con-
22 cerned not later than 15 days after the date of the violation
23 or threatened violation.

24 “(2) If—

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1 “(A) the decision on the grievance by the agency
2 is adverse to the employee or applicant; or
3 “(B) after 60 days from the date the grievance is
4 filed, the agency has not issued a decision on the griev-
5 ance;
6 the employee or applicant is entitled to file a complaint with
7 the Board on Employee Rights not later than 15 days after
8 the adverse decision or the expiration of the 60-day period,
9 as the case may be.

10 **“§ 7174. Board on Employee Rights**

11 “(a) There is hereby established a Board on Employee
12 Rights composed of three members appointed by the Presi-
13 dent, by and with the advice and consent of the Senate,
14 not more than two of whom may be adherents of the same
15 political party and none of whom may hold another office
16 or position in the Government of the United States. The
17 President shall from time to time designate one of the mem-
18 bers as chairman.

19 “(b) The term of office of each member of the Board
20 is 6 years. The term of each member ends on March 1 of an
21 odd-numbered year. A member appointed to fill a vacancy
22 occurring before the end of the term of office of his prede-
23 cessor serves for the remainder of the term. When the
24 term of office of a member ends, he may continue to serve
25 until his successor is appointed and has qualified. The Presi-

1 dent may remove a member only for inefficiency, neglect of
2 duty, or malfeasance in office.

3 " (c) Two members of the Board constitute a quorum
4 for the transaction of business.

5 " (d) The Board may appoint and fix the pay of such
6 officers, attorneys, and employees, and make such expendi-
7 tures, as may be necessary to carry out its functions.

8 " (e) The Board shall prescribe rules and regulations
9 necessary and proper to carry out its functions under this
10 subchapter. To the extent consistent with efficient and eco-
11 nomical administration and the attainment and achievement
12 of justice in the consideration and disposition of matters before
13 the Board, the rules and regulations shall provide for the
14 use of depositions of witnesses. The Board may determine the
15 nature and extent of proof and evidence required to establish
16 a violation or threatened violation of section 7173 (a) of
17 this title. The rules and regulations shall also prescribe the
18 maximum attorney's remuneration which may be awarded
19 under section 7176 (c) of this title for services performed in
20 connection with any matter before the Board, or the court, or
21 both, under this subchapter. The Board may require, by
22 subpena or otherwise, the attendance and testimony of wit-
23 nesses, and the production of such books, records, cor-
24 respondence, memoranda, papers, and documents, as it con-
25 siders necessary.

1 "(f) (1) The Board shall receive and investigate written
2 complaints, filed under section 7173 (e) of this title, from
3 or on behalf of an employee or applicant claiming to be
4 aggrieved by a violation or threatened violation of section
5 7173 (a) of this title. On receipt of such a complaint, the
6 Board forthwith shall transmit a copy thereof to the head
7 of the Executive agency concerned.

8 "(2) If the Board determines, within 10 days after
9 its receipt of the complaint, that the facts alleged in the
10 complaint do not constitute a violation or threatened viola-
11 tion of section 7173 (a) of this title with respect to the
12 employee or applicant, it may dismiss the complaint without
13 a hearing. If the Board dismisses the complaint, it shall
14 notify all interested parties of the dismissal.

15 "(3) If the Board does not dismiss the complaint
16 within 10 days after its receipt thereof, it shall—

17 "(A) conduct a hearing on the complaint with-
18 in 30 days after its receipt of the complaint; and

19 "(B) furnish notice of the time, place, and
20 nature of the hearing thereon to all interested parties.

21 If a hearing on the complaint is to be conducted—

22 "(i) the Executive agency concerned shall file
23 an answer to the complaint and participate as a
24 party in the hearing; and

25 "(ii) any official of that agency, who is alleged,
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1 in the complaint or during the course of the hearing,
2 to have committed a violation or threatened viola-
3 tion of section 7173 (a) of this title, is entitled, in
4 his individual capacity, to file an answer to the
5 allegation and participate as a party in the hearing.

6 “(4) The Board shall render its final decision with
7 respect to any complaint within 30 days after the con-
8 clusion of its hearing thereon.

9 “(g) With the written consent of the employee or ap-
10 plicant concerned, filed with the Board, an officer or repre-
11 sentative of not more than one Federal employee organiza-
12 tion recognized by any Executive agency shall be given an
13 opportunity to participate in each hearing conducted under
14 this section, through submission of written data, views, or
15 arguments, and, in the discretion of the Board, with oppor-
16 tunity for oral presentation.

17 “(h) Insofar as consistent with the purposes of this sec-
18 tion, the provisions of subchapter II of chapter 5 of this
19 title apply to the rulemaking, hearing, and adjudication
20 functions of the Board under this section.

21 “(i) If, after hearing, the Board determines that a vio-
22 lation of section 7173 (a) of this title has not occurred or is
23 not threatened, the Board shall state its determination and
24 notify all interested parties of the determination. Each such
25 determination, including a dismissal by the Board of the

1 complaint without a hearing, constitutes a final decision of
2 the Board for purposes of judicial review.

3 "(j) If, after hearing, the Board determines that a vio-
4 lation of section 7173 (a) of this title has been committed
5 or threatened by an official of an Executive agency not sub-
6 ject to chapter 47 of title 10, the Board—

7 "(1) shall immediately issue and cause to be served
8 on the official an order requiring him to cease and desist
9 from the unlawful act or practice which constitutes a
10 violation;

11 "(2) shall immediately endeavor to eliminate any
12 such unlawful act or practice by informal methods of
13 conference, conciliation, and persuasion; and

14 "(3) may, without regard to chapter 75 of this
15 title—

16 "(A) (i) in the case of the first offense by
17 such an official, other than any official appointed
18 by the President, by and with the advice and con-
19 sent of the Senate, issue an official reprimand against
20 the official or order the suspension without pay of
21 the official from the position or office held by him
22 for a period of not to exceed 15 days; and

23 (ii) in the case of a second or subsequent
24 offense by such official, order the suspension with-
25 out pay of the official from the position or office

1 held by him for a period of not less than 15 nor
2 more than 60 days or, when the Board considers
3 such second or subsequent offense to be sufficiently
4 serious to warrant such action, order the removal
5 of the official from the position or office; and

6 “(B) in the case of any offense by such an
7 official appointed by the President, by and with
8 the advice and consent of the Senate, transmit a
9 report concerning the violation to the President and
10 the Congress.

11 A reprimand or order under subparagraph (3) (A) of this
12 subsection shall not become effective until the expiration of
13 the period within which the official aggrieved by the repri-
14 mand or order may file a petition for review or complaint
15 for trial de novo or, if such a petition or complaint is filed,
16 until the court makes a final disposition of the case.

17 “(k) If, after hearing, the Board determines that a
18 violation of section 7173 (a) of this title has been com-
19 mitted or threatened by an official of an Executive agency
20 subject to chapter 47 of title 10, the Board shall—

21 “(1) submit a report thereon to the Secretary of
22 the military department concerned;

23 “(2) endeavor to eliminate any unlawful act or
24 practice which constitutes such a violation by informal
25 methods of conference, conciliation, and persuasion; and

1 “(3) refer its determination and the record in the
2 case to the Secretary concerned, as defined in section
3 101 of title 10, who shall take immediate steps to dis-
4 pose of the matter under chapter 47 of title 10.

5 However, the immediate steps referred to in paragraph (3)
6 of this subsection shall not be taken by the Secretary con-
7 cerned until the expiration of the period within which the
8 official aggrieved by the reference to the Secretary by the
9 Board under that paragraph may file a petition for review or
10 complaint for trial de novo or, if such a petition or complaint
11 is filed; until the court makes a final disposition of the case.

12 “(1) (1) The Board shall submit, not later than March
13 31 of each year, to the President for transmittal to the Con-
14 gress a report on its activities under this subchapter during
15 the immediately preceding calendar year, including—

16 “(A) the types and kinds of complaints filed with
17 the Board;

18 “(B) the determinations, orders, and actions of the
19 Board with respect to those complaints;

20 “(C) the name of each official of an Executive
21 agency with respect to whom any action was taken or
22 penalty imposed under subsection (j) of this section;

23 “(D) the nature of that action or penalty; and

24 “(E) such other matters as the Board considers
25 relevant and appropriate to provide full and complete

1 information with respect to the operation and administra-
2 tion of this subchapter.

3 " (2) The Secretary of each military department shall
4 submit, not later than March 31 of each year, to the Presi-
5 dent for transmittal to the Congress, a report on his activities
6 under this subchapter during the immediately preceding
7 calendar year, including—

8 " (A) the disposition, under chapter 47 of title 10,
9 of matters referred to the Secretary under paragraph
10 (3) of subsection (k) of this section;

11 " (B) the name of each official of an Executive
12 agency with respect to whom any action was taken
13 or penalty imposed under such chapter;

14 " (C) the nature of that action or penalty; and

15 " (D) such other matters as the Secretary con-
16 siders relevant and appropriate to provide full and com-
17 plete information with respect to his activities under
18 this subchapter.

19 **“§ 7175. Judicial review**

20 " (a) An employee, or applicant for employment, ag-
21 grieved by a final determination or order of the Board on
22 Employee Rights may file, within 30 days after the date
23 of that determination or order, in the district court of the
24 United States for the judicial district in which the alleged
25 violation or threatened violation of section 7173 (a) of this

1 title occurred or in which his official duty station was located
2 at the time of the alleged violation or threatened violation—

3 “(1) a petition for a review of the determination or
4 order; or

5 “(2) a complaint for a trial de novo on the viola-
6 tion or threatened violation of section 7173 (a) of this
7 title, which was the subject of the determination or order
8 of the Board.

9 The petition or complaint shall name as defendant both the
10 Executive agency concerned and the Board on Employee
11 Rights. An official, or former official, of an Executive
12 agency—

13 “(A) with respect to whom, in connection with the
14 petition for review, there is involved an alleged viola-
15 tion or threatened violation by him of section 7173 (a)
16 of this title;

17 “(B) with respect to whom the complaint for a
18 trial de novo, or the trial pursuant to the complaint, in-
19 volves an alleged violation or threatened violation by
20 him of section 7173 (a) of this title; or

21 “(C) aggrieved by a final determination or order
22 of the Board, or part or application thereof, in connec-
23 tion with such alleged violation or threatened violation;
24 is entitled, in his individual capacity, to file an answer with

1 respect to such violation or threatened violation and partici-
2 pate as a party in the proceedings.

3 "(b) If, after the expiration of 30 days after the date
4 of a final determination or order of the Board, a petition or
5 complaint with respect to such determination or order has
6 not been filed under subsection (a) of this section, an official
7 or former official of an Executive agency aggrieved by that
8 determination or order, or part or application thereof, may
9 file, within 30 days after the expiration of such 30-day
10 period, in the district court of the United States for the judi-
11 cial district in which the alleged violation or threatened vio-
12 lation of section 7173 (a) of this title occurred or in which
13 his official duty station was located at the time of the alleged
14 violation or threatened violation, a petition for review of
15 the determination or order, or part or application thereof.

16 "(c) A petition for review or complaint for trial de-
17 novo filed under subsection (a) or (b) of this section shall
18 name as defendant both the Executive agency concerned and
19 the Board, and a copy thereof shall be served on the Execu-
20 tive agency concerned and the Board. The Executive agency
21 concerned and the Board shall file with the court an answer
22 to the petition or the complaint and shall participate as a
23 party in the proceedings before the court.

24 "(d) When a copy of a petition for review is served on

1 the Board, it shall certify and file with the court a transcript
2 of the record on which the final determination or order of
3 the Board is based. On filing of a petition with the court, and
4 in its consideration of the petition, the court shall have
5 jurisdiction to—

6 “(1) issue such restraining order, interlocutory
7 injunction, permanent injunction, or mandatory injunc-
8 tion, as may be necessary and appropriate with respect
9 to any determination or order, or part or application
10 thereof, made by the Board which is under review;

11 “(2) affirm, modify, or set aside any such deter-
12 mination or order, or part or application thereof;

13 “(3) require the Board to make any determination
14 or order which it is authorized to make under section
15 7174 (j) of this title, but which it has failed or refused
16 to make;

17 “(4) remand the matter to the Board for appropri-
18 ate action by the Board and the Executive agency
19 concerned in accordance with the decision of the court;
20 or

21 “(5) take any of the actions described in para-
22 graphs (1), (2), (3), and (4) of this subsection.

23 The reviewing court shall set aside any finding, conclusion,
24 determination, or order of the Board as to which a com-
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1 plaint is made that is unsupported by substantial evidence
2 on the record considered as a whole.

3 “(e) On the filing of a complaint for a trial de novo,
4 the court shall have jurisdiction to—

5 “(1) try and determine the action, irrespective of
6 the existence or amount of pecuniary injury done or
7 threatened;

8 “(2) issue such restraining order, interlocutory in-
9 junction, permanent injunction, or mandatory injunction,
10 or enter such other judgment or decree, as may be neces-
11 sary or appropriate to prevent the threatened violation
12 or to afford the plaintiff and others similarly situated
13 complete relief against the consequences of any violation;

14 or

15 “(3) both.

16 The court shall decide all questions of law and fact in any
17 action under this subsection.

18 “(f) With the written consent, filed with the court, of
19 an employee, applicant for employment, official of an Execu-
20 tive agency, or former official of an Executive agency ag-
21 grieved by a final determination or order of the Board, who
22 is entitled to file a petition for review, a complaint for a trial
23 de novo, or answer, or to participate as a party in any pro-
24 ceeding, under this section, not more than one Federal em-

1 employee organization recognized by any Executive agency,
2 may—

3 “(1) file a petition for review or a complaint for a
4 trial de novo under this section on behalf of any such em-
5 ployee, applicant, official, or former official; or

6 “(2) intervene in connection with the review or the
7 trial de novo.

8 **§ 7176. General provisions**

9 “(a) An individual called on to participate in any phase
10 of an administrative or judicial proceeding under this sub-
11 chapter shall be free from restraint, coercion, interference,
12 intimidation, or reprisal in the course of, or because of, his
13 participation.

14 “(b) An employee or an official of an Executive agency
15 who is absent from his regular duties solely because of his
16 personal appearance, including an appearance to give his dep-
17 osition, before the Board on Employee Rights, or before the
18 appropriate court, in connection with any matter before
19 the Board or the court under this subchapter, shall not incur
20 a loss of or reduction in any right, entitlement, or benefit as
21 an employee or official of that agency. A period of such
22 absence within his regularly scheduled tour of duty is service
23 performed by the employee or official while on official busi-
24 ness. Travel by the employee or official during a period of

1 such absence, whether or not performed within his regularly
2 scheduled tour of duty, is travel on official business.

3 "(c) On written application certifying his expenses and
4 charges filed with the Board on Employee Rights by an
5 attorney who has appeared before the Board, or the appro-
6 priate court, in connection with any matter before the
7 Board, or the court, or both, under this subchapter, which
8 has been determined by the Board, or the court, in favor
9 of the party represented by the attorney, the Board may
10 allow, at the conclusion of the representation and in accord-
11 ance with the regulations prescribed under section 7174 (e)
12 of this title, such remuneration to the attorney as it considers
13 reasonable and proper and shall certify to the Executive
14 agency concerned the amount of the attorney's remunera-
15 tion granted by it. The agency shall pay the certified
16 amount of such remuneration, in accordance with the fol-
17 lowing provisions:

18 "(1) The agency shall charge against such certi-
19 fied amount of remuneration all sums previously paid
20 to the attorney by the party represented.

21 "(2) If the sums previously paid to the attorney
22 by that party for such representation equal or exceed
23 the certified amount of the attorney's remuneration, the

1 agency shall reimburse that party in that certified
2 amount.

3 " (3) If the sums previously paid to the attorney
4 by that party for such representation are less than that
5 certified amount, the agency shall reimburse that party
6 in the amount paid by that party and shall pay to the
7 attorney an amount equal to the difference between the
8 certified amount of the attorney's remuneration and the
9 aggregate of the sums previously paid by that party to
10 the attorney.".

11 (b) The analysis of chapter 71 of title 5, United States
12 Code, is amended by adding the following at the end thereof:

"SUBCHAPTER III—EMPLOYEE RIGHTS

"Sec.

"7171. Policy.

"7172. Definition.

"7173. Employee rights.

"7174. Board on Employee Rights.

"7175. Judicial review.

"7176. General provisions.".

13 (c) Section 5316 of title 5, United States Code, is
14 amended by adding at the end thereof:

15 " (131) Members of the Board on Employee
16 Rights (3).".

17 SEC. 2. Subchapter III of chapter 71 of title 5, United
18 States Code, shall apply only with respect to acts, violations,
19 threatened violations, grievances, and other similar matters
20 covered by such subchapter which arise or occur on or after
21 such date following the date of enactment of this Act as the

1 Board on Employee Rights, established by the amendments
2 made by the first section of this Act, shall prescribe but in no
3 event later than the one hundred and eightieth day following
4 such date of enactment.

5 SEC. 3. Notwithstanding section 7174 of title 5, United
6 States Code, as contained in the first section of this Act, the
7 terms of office of the three members first appointed to the
8 Board on Employee Rights shall end, as designated by the
9 President, one on March 1, 1973, one on March 1, 1975,
10 and one on March 1, 1977.

[COMMITTEE PRINT]

MAY 26, 1971

92D CONGRESS
1ST SESSION
H. R.

A BILL

To amend title 5, United States Code, to protect civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights, to prevent unwarranted governmental invasions of their privacy, and for other purposes.

By Mr. -----

JUNE , 1971

Referred to the Committee on -----